



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Adress: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,934	09/09/2003	Barry Wixey	TN-2347B	1594
7590	04/14/2008		EXAMINER	
Adan Ayala, Esq. Black & Decker Inc. 701 E. Joppa Road, TW-199 Towson, MD 21286			SELF, SHELLEY M	
			ART UNIT	PAPER NUMBER
			3725	
			MAIL DATE	DELIVERY MODE
			04/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/657,934	Applicant(s) WIXEY ET AL.
	Examiner Shelley Self	Art Unit 3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11 February 2008.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2 and 4-21 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 1,2,4 and 10-20 is/are allowed.
 6) Claim(s) 5-9,21 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 29 June 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Response to Amendment***

The amendment filed on February 11, 2008 has been considered but is ineffective to overcome the prior art reference and an action on the merits follows.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-9 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welsh et al. (5,771,949) in view of Liao (5,829,499) and Mankertz, Otto (DE373842 A1). With regard to claims 5 and 21, Welsh discloses a power planer for planing a top surface of a workpiece comprising: a base assembly (20); a carriage assembly (26) disposed above the base assembly, the carriage assembly comprising a cutter head assembly (52), the carriage assembly being vertically movable to change distance between the base assembly and the carriage assembly; a hand crank (96) attached to the carriage assembly for changing the distance between the base assembly (col. 6, lines 36-43) and the carriage assembly; a material removal gauge (370) disposed on the carriage assembly; a switch (72) disposed on the carriage assembly; and a height scale (106) disposed on the base assembly. Welsh also discloses the cutterhead having a main body and a substantially triangular cross-section. Welsh is silent to three knives disposed on the main body. Further Welsh does not disclose the hand crank vertically movable with the carriage.

Liao teaches in a closely related art, a power planer (fig. 1) for planing a top surface of a workpiece including a base (20), carriage assembly (30) including a cutter head, a hand crank (50; fig. 4) attached to the carriage assembly and vertically movable with the carriage assembly (col. 3, lines 11-35; fig. 4). Liao teaches the hand crank vertically movable with the carriage assembly for ease of adjusting the height or vertical distance of the carriage assembly relative to the base. Because the references are from a closely related art and deal with a similar problem (i.e. material removal from a workpiece via a vertically adjustable cutterhead) it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Welsh's hand crank to be vertically movable with the carriage assembly so as to efficiently adjust the vertical position of the carriage assembly and cutterhead relative to the base assembly as taught by Liao.

Furthermore it also would have been obvious at the time of the invention to one having ordinary skill in the art to construct either Welsh or Liao having a substantially triangular cross-section wherein a knife is attached to each side of the body; because Applicant has failed to positively recite any criticality to the use of a triangular cross section with straight sides. Therefore in the absence of any positively recited criticality to the specific shape selection of triangular; such is deemed an obvious design expedient and would result from routine engineering experimentation and practices. Accordingly such selection in itself does not warrant patentability.

Moreover, Mankertz teaches in a closely relate art a main body of a cutterhead head for use with a planar machine wherein them main body (fig. 3) has a substantially triangular cross-section, each side of the main body being substantially straight and each knife is disposed on one

side of the main body (fig. 3). Mankertz explicitly teaches the main body having a substantially triangular cross-section wherein a knife is attached to each side of the body; therefore three knives (pg. 2, lines 76-78) and wherein the main body includes at least one scoop (fig. 3). Mankertz teaches this construction so as to efficiently plane/remove material from a workpiece. Because the references are from a similar art, it would have been obvious to the skilled artisan at the time of the invention to construct Welsh or replace, Welsh's circular cross-section main body with a main body having a substantially triangular cross-section so as to efficiently plane or remove material from a workpiece as taught by Stutzman.

As to the knives being locked in a horizontal position (clm. 9), Welsh discloses a locking mechanism for locking the cutterhead and carriage at any desired position, therefore the ability to so lock the knife/blade at a horizontal position.

With regard to claims 6 and 7, Welsh discloses at least six screws (60).

With regard to claim 8, both Welsh and Liao disclose a cutterhead lock mechanism (Welsh 172, 210, 240, 292, 310; Liao figs. 6, 7).

Allowable Subject Matter

Claims 1, 2, 4, and 10-20 are allowed.

Response to Arguments

Applicant's arguments filed February 11, 2008 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shelley Self/
Primary Examiner, Art Unit 3725

April 9, 2008